

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICKY A. BEAVER,) Case No. C05-1938-MJP-JPD
Plaintiff,)
v.)
CITY OF FEDERAL WAY, et al.,) ORDER APPOINTING COUNSEL
Defendants.) PURSUANT TO 28 U.S.C. § 1915

Plaintiff is proceeding *pro se* and *in forma pauperis* (“IFP”) in this 42 U.S.C. § 1983 civil rights action against the City of Federal Way and two officers of the Federal Way Police Department. This matter comes before the Court *sua sponte* upon reference by the Honorable Marsha J. Pechman. Dkt. No. 42. After careful consideration of the governing law and balance of the record, the Court ORDERS that counsel be appointed for plaintiff in this case.

No constitutional right to counsel exists for an indigent plaintiff in a civil case unless the plaintiff may lose his physical liberty if he loses the litigation. *See Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 25 (1981). However, pursuant to 28 U.S.C. § 1915(e)(1), the Court has the discretion to appoint counsel for indigent litigants who are proceeding IFP. *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995). The Court will appoint counsel only under “exceptional circumstances.” *Id.*; *Wilborn v. Escalderon*, 789

ORDER APPOINTING COUNSEL
PURSUANT TO 28 U.S.C. § 1915

PAGE - 1

01 F.2d 1328, 1331 (9th Cir. 1986). “A finding of exceptional circumstances requires an
02 evaluation of both the likelihood of success on the merits and the ability of the plaintiff to
03 articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn*,
04 789 F.2d at 1331 (internal quotations omitted). These factors must be viewed together before
05 reaching a decision on a request for counsel under § 1915(e)(1). *Id.*

06 Because plaintiff has prevailed against Officers Doug Laird and Heather Castro at the
07 summary adjudication stage, *see* Dkt. No. 41, appointment of counsel is appropriate.

08 The Clerk is directed to appoint counsel and to send a copy of this Order to plaintiff,
09 counsel for defendants, and the Honorable Marsha J. Pechman. In light of this Order, the
10 deadline for the Joint Pretrial Statement is STRICKEN and will be reset by the Court after
11 counsel has been appointed.

12 DATED this 29th day of November, 2006.

13 
14 JAMES P. DONOHUE
15 United States Magistrate Judge